



**NISQUALLY INDIAN TRIBE
TRIBAL EMPLOYMENT RIGHTS ORDINANCE**

COMPLIANCE PLAN

Note: All Contractors/Subcontractors must meet with the TERO office.

Any covered entity not submitting a completed compliance plan will be denied the right to commence business on the Nisqually Indian Reservation. A compliance plan should be submitted at least two (2) weeks prior to starting project. All Contractors are required to submit copy of contract with compliance plan to TERO.

Failure to comply with the TERO Ordinance may result in civil penalties.

Prime Contractor: _____

Subcontractor: _____

Project: _____

Starting Date: _____

Ending Date: _____

Historically, Nisqually Tribal members and other Native Americans have suffered discrimination in employment on and near the Nisqually Reservation. As a result of this discrimination Native Americans were excluded from employment and training opportunities. These lost opportunities created high unemployment rates and poverty. With no job training programs or on-the-job training, Tribal members had little chance for permanent/full time employment. When Native Americans did work they were paid less than their non-Indian counterparts and had little chance for advancement. To eliminate discrimination and ensure that covered employers give preference to qualified Native Americans in all hiring, promotion, training, lay-offs, and all other aspects of employment, the Nisqually Indian Tribe established a Tribal Employment Rights Ordinance (TERO).

Project Information

Project Name: _____ Project No: _____

Location: _____

Project Owner: _____

Project Architect Phone: _____

Project Funding Agency: _____

Funding Agency Contact: Phone _____

Contractor Information

Check all that apply: Prime Contractor ____ Sub Contractor ____ Union ____ Non-Union ____

Company: _____

Complete Address: _____

Contact Person: _____

Title: _____

Phone: _____ Fax: _____ Cell: _____

Insurance Company: _____

Policy: _____

Scope of work performed: _____

Construction Schedule/Business Plan: _____

Union Agreement: _____

(Nisqually TERO, Title 42, requires that every union with a collective bargaining agreement with a covered employer must file a written agreement stating that the union will comply with the regulations and orders of the Commission and the TERO Officer. Until such an agreement is filed with the TERO Officer, the employer may not commence work on Tribal land or on projects that directly benefit the Nisqually Tribe.)

Contract Amount: _____ Employment Rights Tax 1.75%: _____

This agreement shall be for the life of this specific project, plus a warranty period of two years.

This compliance plan serves as an invoice – payment must be paid from this compliance form.

No other invoices or statements will be sent.

Identification of Core Crew

Core crew employees are defined as one who is an owner of the company, or in a top supervisory or lead position and has been on the employer contractor's annual payroll for a minimum period of one year continuously. An employee who has never held a supervisory position within the company is not considered a core crew employee. All claims to possess a "specialized" skill must be submitted with a complete resume of work history and proof of specialized skill (e.g. certificates, licenses, etc.) (See Attachment A, Page 1, and Section 1A).

Name: _____ Position/Classification: _____
Licensed? _____ Hourly Rate: _____ How long with Company? _____

Name: _____ Position/Classification: _____
Licensed? _____ Hourly Rate: _____ How long with Company? _____

Name: _____ Position/Classification: _____
Licensed? _____ Hourly Rate: _____ How long with Company? _____

Identification of Key Personnel

A Key Employee is defined as one who the employer has invested time and costs (for training etc.) this employee to perform critical function such that the employer would risk financial damage or loss if unable to employ on this project (See Attachment A, Page 1, and Section 1B).

Name: _____ Position/Classification: _____
Licensed? _____ Hourly Rate: _____ How long with Company? _____

Name: _____ Position/Classification: _____
Licensed? _____ Hourly Rate: _____ How long with Company? _____

Name: _____ Position/Classification: _____
Licensed? _____ Hourly Rate: _____ How long with Company? _____

☐ Employers may request approval, through a "TERO Waiver", for employees who do not meet these definitions.

☐ All supervisory employees listed, will be required to attend the TERO Pre-Construction Meeting, which will be held prior to the beginning of work on the project identified on this Compliance Plan

Identification of Sub-Contractors

It shall be the Prime/General Contractors responsibility to provide copies of this TERO Compliance Plan and Agreement form to all their subcontractors and suppliers. All Subcontractors must secure an approved TERO Compliance Plan and Agreement **prior** to the commencement of any portion of work activity they will be involved in. The Prime and all subcontractors will be required to attend a TERO Pre-Construction meeting prior to the beginning of work.

Company Name: _____ **Phone#:** _____

Scope of Work: _____ **Estimated Start Date:** _____

Company Name: _____ **Phone#:** _____

Scope of Work: _____ **Estimated Start Date:** _____

Company Name: _____ **Phone#:** _____

Scope of Work: _____ **Estimated Start Date:** _____

Company Name: _____ **Phone#:** _____

Scope of Work: _____ **Estimated Start Date:** _____

Man Power Requests

Provide a preliminary estimate of workers (in addition to core crew and key employees) that your company will require completing the work on this project. List classification/skill, number needed, starting date, and pay rate. A TERO Dispatch form and follow up call to TERO at least forty-eight (48) hours prior to identified “start date” is required.

Attach a copy of Personnel Manual and Company application to be used in selection process.

Skill/Qualification: _____ **Start Date:** _____

Number needed: _____ **Pay Rate:** _____ **Special Instruction:** _____

Skill/Qualification: _____ **Start Date:** _____

Number needed: _____ **Pay Rate:** _____ **Special Instruction:** _____

Skill/Qualification: _____ **Start Date:** _____

Number needed: _____ **Pay Rate:** _____ **Special Instruction:** _____

Skill/Qualification: _____ **Start Date:** _____

Number needed: _____ **Pay Rate:** _____ **Special Instruction:** _____

Training and Salary

The covered employer agrees to establish or participate in training programs deemed by the TERO Commission as necessary in order to increase the pool of qualified Native Americans on Tribal lands as quickly as possible.

All qualified employees in TERO approved training programs will be evaluated and paid in accordance with a training plan set forth between the contractor and TERO.

Emergency Replacement Workers:

TERO Waivers must be obtained for workers who do not meet definitions of “Core Crew/Key Employees”. Employers operating during hours when the TERO office is closed (i.e. weekends, holidays, etc.), and are in need of workers to fill a vacancy will be authorized to place an emergency worker in the vacancy. This emergency placement shall be allowed no longer than seventy-two (72) hours. The TERO will be notified of such hires immediately upon the next working day and the position will be filled pursuant to the standard TERO procedures described in this compliance plan. Emergencies will be determined on a case-by-case basis.

Termination/Lay Offs

(No qualified Native American employee, who can perform the work required, shall be terminated through layoff or reduction in force while a non-Indian employee in the same craft is still employed.)

The TERO Director/Administrator or Compliance Officer has the right to make on-site inspections and conduct compliance investigations at all sites where employment is taking place under the provisions of this compliance agreement plan.

Employers ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the employees are assigned to work. The employers shall specifically ensure that all supervisors are aware of and carry out the employers obligations under the TERO ordinance.

The employer agrees to respect the right of the TERO referral to decide for themselves whether to accept cash in lieu of benefits or to accept fringe benefits for construction projects.

The employer agrees to comply with all rules and regulations set forth in the TERO Ordinance. This agreement is affirmed in writing by the appropriate company officer.

TERO Pre-Construction Meeting

A TERO Pre-Construction meeting is required to provide each contractor and their supervisory personnel orientation on the TERO requirements and procedures. The Prime/General Contractor shall be responsible for contacting TERO to schedule the meeting and for providing notification of meeting date and time to their subcontractors.

Meeting Date: _____ **Location:** _____ **Time:** _____

TERO Personnel: _____ Date: _____

Man Power Request Form

Employer: _____ Contact Person: _____

Phone: _____ Ext. _____ Cell Phone: _____

Address: _____

Job Location: _____

Rate of Pay: _____ per: Hr ____ Wk ____ Month ____ No of Positions: _____

Date needed: _____ TO _____ Time: _____ Job is: FT ____ PT ____ PERM ____ Temp ____

Job will last: 1-5 Days ____ 1-2 Weeks ____ 30-60 Days ____ 60-90 Days ____ 90-120 days ____ + 150 Days ____

Hours: _____ M-F ____ Wkends ____ Shift ____ License Required? Yes ____ No ____ CDL? A ____ B ____ C ____ D ____

Tools Needed: _____

Working Conditions/ Physical Demands: _____

Skills Training: _____

Special Instruction: _____

Alcohol/Drug Test Required? Yes ____ No ____ Physical Required? Yes ____ No ____

Testing Center/Lab: _____

What is applicant being tested for: _____

Note: *The contractor will be required to provide a copy of the drug test results to the TERO Office.*

What is the pay schedule: (i.e. M-Sun) and when are timesheets due (day & time)? _____

When are employees expected to be paid? (day & time) _____

What are the arrangements for payday? _____

Will employees be paid for show up time? Yes ____ No ____ If no, explain why _____

For Office Use Only:

Date: _____ Rec'd by: _____

Work Permit Requested by: _____ Work Permit Issued No. _____

Date: issued: _____ Approved by: _____

TERO Understanding and Acceptance

Nisqually Tribal Employment Rights Office

Understanding & Acceptance

On behalf of _____, I hereby certify that I have received and understand the Nisqually Tribal Employment Rights Ordinance (TERO) requirements set forth in this TERO Compliance Plan and Agreement, and hereby agree to accept the responsibility of compliance with the described obligations and requirements.

Dated this _____ day of _____, 20_____.

Project: _____ Project No. _____

Contractor: _____ Sub-Contractor: _____

Address: _____

Phone: _____ Fax: _____

Printed Name: _____ Title: _____

Signature: _____ Date: _____

TERO ATTEST

On behalf of the Nisqually TERO, I hereby attest to the conditions set forth in this TERO Compliance Plan and Agreement, and will enforce this agreement through the powers vested in me by the Nisqually TERO Commission and the Nisqually Employment Rights Ordinance (TERO), Title 42.

Signature: _____ Date: _____

TERO Officer

NOTICE TO PROCEED

The attached TERO Compliance Plan and Agreement has been received and is fully acceptable. On behalf of the Nisqually TERO, authorization to begin work on the above-described project is hereby granted.

Signature: _____ Date: _____

TERO Officer

ATTACHMENT A

DESCRIPTION OF TERO COMPLIANCE REQUIREMENTS

DESCRIPTION OF TERO COMPLIANCE REQUIREMENTS

FINDINGS

Historically, Nisqually Tribal members and other Native Americans have suffered discrimination in employment on and near the Nisqually Reservation. As a result of this discrimination Native Americans were excluded from employment and training opportunities. These lost opportunities created high unemployment rates and poverty. With no job training programs or on-the-job training Tribal members had little chance for permanent/full time employment. When Native Americans did work they were paid less than their non-Indian counterparts and had little chance for advancement. To eliminate discrimination and ensure that covered employers give preference to qualified Native Americans in all hiring, promotion, training, lay-offs, and all other aspects of employment, the Nisqually Indian Tribe established a Tribal Employment Rights Ordinance (TERO).

NISQUALLY TRIBAL ORDINANCES

The Nisqually Tribe's *Tribal Employment Rights Ordinance*, Title 42, addresses Native American preference in employment, training opportunities, contracting, and established the Tribal Employment Rights Office and its requirements.

1. Employment Requirements:

The intent of TERO is to achieve employment and training opportunities for Nisqually Tribal Members, their immediate families, and all other Native Americans. The provisions of this Title are consistent with Title VII of the 1964 Civil Rights Act which prohibits employment discrimination based on race, color, religion, sex, or national origin. Title VII sec. 703(i) states, "Nothing in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which preferential treatment is given to any individual because he is an Indian living on or near a reservation." 42 U.S.C. sec. 2000e-2(i).

All Core Crew and Key Employees, who will be utilized on this project, must be identified in this TERO Compliance Plan and Agreement by name and title, with a complete description of duties each will be performing on this project.

A. **Core Crew Employee** is defined as one who is an owner of the firm, or in a supervisory position and listed as such on the employer's or contractors annual payroll for a minimum period of one year continuously. An employee who is hired on a project-by-project basis is not considered a core crew employee. (*Attach a complete description of duties each will perform on this project, including operation of equipment and type of equipment.*)

B. **Key Employee** is defined as one who is in a supervisory position or one who possess a “specialized skill” in which the employer who invested time and cost to help that employee reach a level of specialized skill and who performs a critical function, such that an employer would likely risk financial damage or loss if unable to employ. Such claims to have invested in the employee’s skill level shall require written proof, including resume of work history, certificates, licenses, etc. *A complete description of duties for each “key employee” listed must be attached to this TERO Compliance Plan.* TERO will review the information submitted and make a determination. Employers who wish to utilize workers that do not meet the definition “key employee” on this project must obtain approval by submitting a “TERO Waiver” (*See Attachment C*).

C. **Hiring:** Covered employers agree to utilize the TERO Office to fill their manpower request, and must provide a minimum of forty-eight (48) hours notice and a job description on the manpower needs to the TERO office. The TERO staff will attempt to accommodate the employer in the timeliest manner, matching the specified needs with a TERO referral that meets the minimum of qualifications. TERO will certify in writing when a qualified TERO referral is not available.

D. **TERO Dispatching:** All TERO referrals or “Dispatches” will be made from the Tribal Hiring Hall or Skills Bank listings of qualified TERO referrals. The hiring hall lists contain names of unemployed, TERO qualified, Native Americans who have indicated that they are available for work and their skill level. Once a name is taken from the Hiring Hall List, the individual’s name will be provided to the employer. If that worker possesses the minimum threshold of qualification, then they are referred for the opportunity. All TERO referrals will report to work with a TERO Dispatch form in hand, unless a copy has been faxed, mailed, or hand-delivered prior to the referral’s first day of work. The employer shall contact TERO regarding any worker who reports to the job site without a TERO Dispatch Form in hand. (*See Attachment B*).

E. **TERO Dispatch Form** provides a space for the employer to give a brief job description which includes company name, address, and phone number, position title/classification, start date, start time, rate of pay, anticipated length of employment, who to see, etc. The TERO referral or “dispatch” shall sign the pay rate offered. All dispatch forms shall require dates and signatures of the employer and a TERO Representative. Unsigned forms will be considered invalid. Employers should review the dispatch form and discuss it with the referral/worker his/her first day of work. Any revisions to the work opportunity, identified on the original dispatch form, regarding position/title, duties, rate of pay, etc. must be reported to TERO prior to any revisions taking place.

F. Qualified TERO referral is defined as, an enrolled Nisqually Tribal member, the immediate family of a Nisqually Tribal member, or any other Native American living on or near the Nisqually Reservation who has the minimum qualifications for the work described on the Man Power Request Form.

G. Covered Employer: Any employer hiring two or more employees who, during any 20-day period, spends 16 or more hours engaged in work on Tribal land.

H. Hiring Hall / Skills Bank: The main TERO Hiring Hall / Skills Bank is located at the Nisqually TERO Office, in the Human Resources building.

I. Training: All training opportunities or Training Special Provision (TSP) requirements must be identified prior to the commencement of work activity on this project. Training opportunities shall be filed through the same process described under Section C “Hiring”, and through coordination with the TERO Employment and Training Program components to locate individual(s) who may already be in an apprenticeship program for which the opportunity will exist.

J. Waivers : A TERO waiver is an employer’s written request for employees who do not meet the definition of “Core Crew” or “Key Employee” (*See TERO Waiver Form in Attachment C*). Employers are required to notify the TERO of the work opportunity as described in “Section C – Hiring,” prior to submitting a Waiver Request. Written request and supporting documentation (i.e. resume, proof of certification, licenses, etc.) must be submitted and approved by TERO prior to the individual beginning work on the above described project. Any worker discovered on the job, who does not possess an approved TERO Waiver, shall constitute grounds for a “Notice of Violation” and possible sanctions against the employer.

K. Layoff: TERO referred workers will have priority in all work opportunities. In the event that a lay-off becomes necessary, a TERO Referred worker with skills, equal to a waived employee, and in some cases key employee, will be retained. Daily TERO monitoring and a review of weekly certified payroll reports will be made to assure that opportunities are not being eliminated by revising the duties of Core Crew, Key Personnel or Waived Employees.

L. Disciplinary Action: Employers must report any disciplinary action taken against a TERO Referred worker in written form, providing name, date of incident(s), individual(s) involved, names of witnesses, location of incident, etc. Any disciplinary action taken against a TERO Referred worker will be kept on record at the TERO Office.

M. Termination: Employers must discuss termination of a TERO Referred worker with the TERO Office prior to final action. In instances of deliberate acts of safety violation, damage to property,

or act of violence, the employer shall have the right to dismiss the employee immediately. Failure to provide TERO with a notice of impending termination for other matters may result in a violation of this agreement.

N. Employer Policies: The employer must submit a copy of its employee policies prior to the commencement of work activity for TERO review and approval. In case of any conflict or dispute between company policies and with the TERO requirements, Nisqually Tribal Law will have primacy. An employer may be required to demonstrate that a challenged employment practice is job-related for the position in question and consistent with business necessity.

O. Drug Testing: Employment must be offered prior to requiring a “pre-employment” drug test. The TERO Office must be notified and provided a copy of the employer’s pre-employment drug testing policies. Documentation must be provided that all core crew and key employees have complied with the drug testing requirements prior to the commencement of their work activity on this project.

2. WAGE RATES/FRINGE BENEFITS/PAYROLL REPORTS

A. Wages: The prime contractor and their subcontractor(s) must submit a table of wage to be paid. TERO referrals must receive pay equal to the employer’s core crew and waived workers performing the same duties/job descriptions. Each worker must receive a paycheck with an explanation of workweek, payroll number, regular and over-time hours, and all deductions taken. The company will pay General Laborer positions according to the approved Project Wage Scale and the pay scale equal to that utilized for permanent/annual employees.

B. Fringe Benefits TERO referrals will receive all fringe benefits in cash, unless the worker is a union member. TERO referrals will not be required to join a union to procure or retain employment.

C. Certified Payroll Reports: All contractors and subcontractors must submit a weekly certified payroll report. Certified payroll reports submitted to the contracting agency will not satisfy this requirement. Payroll reports must contain the name, address, social security number, classification/title, hourly rate, over-time rate, number of regular and over-time hours worked that pay period and deductions for each worker the employer has on the project. Failure to submit certified payroll reports on a weekly/timely basis will constitute grounds for a “violation” and possible sanctions against the employer.

D. Payroll Deductions: No payroll deductions indirectly or directly will be taken from the full wages earned, other than permissible deductions outlined in the United States Federal Labor and Standards Act (FLSA) and this TERO Agreement.

E. Pay Day Schedules: TERO Referrals will receive their pay on the same day as the employer's core crew and key employees. All employees must receive their paycheck for the previous week's work hours no later than the close of the workday every Thursday or Friday; whichever may be the last working day of the week for the employer.

F. Distribution of Payroll: Payroll checks must not be distributed to anyone other than the worker for whom the check is made out to. Unless the worker has given written permission to release their check to specifically named individual.

G. Show up Time: will be determined by the TERO Officer on a case-by-case basis. Failure to provide adequate notice of the cancellation of workday may require the employer to pay show up time.

3. CONTRACTING AND SUBCONTRACTING:

Native American Preference in Contracting and Subcontracting opportunities on projects located on or near the Nisqually Reservation is allowed through the authority delegated by or recognized by the United States Congress through federal enactment's, rules and regulations promulgated for the benefit of Native Americans. The General Contractor shall give preference to Nisqually TERO Certified Native American Owned Businesses in all subcontracting opportunities for this project. A list of Nisqually Certified Native American Owned Businesses is attached or available from TERO. TERO certified contractors are subject to the same terms of this agreement and required to submit a Compliance Plan and Agreement for TERO approval prior to the start of work activity.

4. RELIGIOUS ACCOMMODATION:

In concurrence with the Native American Indian Religious Freedom Act, the employer agrees to provide reasonable accommodation to the Native American Indians who wish to exercise their rights under the Act. TERO will assist the employer in identifying "reasonable accommodation."

5. EMPLOYMENT RIGHTS TAX:

An Employment Rights Tax will be assessed at 1.75% of the total contract award amount for contracts totaling \$20,000 or more. The Employment Rights Tax shall be paid prior to commencing work. Where good cause is shown, the Director may authorize the Tax be paid in installments.

A. Change Orders: Must be reported to the TERO Office immediately upon approval from the funding/contracting agency. Adjustments to the Employment Rights Tax amount will be made accordingly.

6. PROJECT MONITORING:

TERO will monitor this Compliance Plan and Agreement through onsite visits. On-site visits will be conducted in a manner, which causes minimal interruption to the progress of the project. Any possible

violation will be documented and reported to the employer for immediate resolution. Continuous violation may result in sanctions against the employer, including up to \$500 per day per violation, back pay for lost opportunity and as a last resort, a stop work order.

7. COMPLAINTS:

A. On-The-Job Contracts: TERO referrals are advised to make complaints for incidents occurring on the job through the procedures outlined in the employer's policies prior to filing a complaint with TERO. The employer must provide notice to the TERO Office once a complaint is filed and provide information on the action taken to resolve the matter and final disposition of the matter once it is settled.

B. Discrimination: If a TERO referred worker feels they have been discriminated against because they are Native American and have been treated unfairly by the employer or the employer representative (e.g. core crew, key personnel) they may file a complaint with the TERO Office. The complaint must be employment related.

C. Complaint Investigation: The TERO Office will investigate complaints on-site, by interviewing witnesses, collecting written statements and reviewing supporting evidence. Employees providing statements to the investigator will not be penalized for time taken to give a brief statement or for cooperating with the investigation. The TERO investigator will attempt to minimize the impact of progress on the project.

8. FAILURE TO COMPLETE COMPLIANCE PLAN:

Failure to complete this compliance plan thoroughly and submit prior to the commencement of work on the above described project will be construed as a refusal to comply and may result in a "Notice of Violation." The Nisqually TERO Office will make every effort to work cooperatively with the employer named on this agreement. However, when willful disregard for these requirements are evident, the sanctions afforded will be utilized to the fullest extent of the law.

ATTACHMENT B

NISQUALLY

TERO

DISPATCH

FORM



NISQUALLY TERO DISPATCH FORM

Project: _____

Location: _____

DISPATCH INFORMATION & JOB SUMMARY (TO BE COMPLETED BY EMPLOYER)

Company Name: _____

Address: _____

Phone: _____ Fax: _____ Cell/Shed: _____

Classification/Title of dispatched worker: _____

Hourly Pay Rate: _____ Fringe Benefit Rate: _____

Start Date: _____ Time: _____ AM _____ PM Job Length _____

Supervisor to report to: _____ Title: _____

Brief Job Summary: _____

Tools/Equipment required: _____

Employer will provide the following: _____

Employer Signature: _____ Date: _____

UNDERSTANDING AND ACCEPTANCE (TO BE COMPLETED BY DISPATCHING WORKER)

I have reviewed and understand that I am being dispatched to the above named company for the stated job classification/title, at no less than the hourly rate of stated. I understand that TERO does not issue payroll for the above named company, and questions regarding pay, paydays or any discrepancy of pay related matters, I must first attempt to resolve the matter with my employer. If issues cannot be resolved TERO will intervene upon receipt of written complaint. I further understand that it is my responsibility to carry proper identification with me when I report to work for employer tax purposes, and proof of citizenship. I also understand that it is not TERO'S responsibility to provide my proof of enrollment or any other identification required.

The employer is required to deduct Washington State Taxes unless the following requirements apply to me: 1) I am enrolled member of a federally recognized Indian Tribe; 2) I am working and reside on the Nisqually Reservation 3) I can provide proof of enrollment.

_____ I HEREBY ACCEPT THIS JOB DISPATCH _____ I DECLINE THIS DISPATCH

Dispatch Signature: _____ Date: _____

TERO Official _____ Date: _____

ATTACHMENT C

NISQUALLY

TERO

EMPLOYEE

WAIVER

FORM



NISQUALLY TERO REFERRAL WAIVER REQUEST FORM

Employer: _____

Project: _____

The Employer requests a TERO Referral waiver from Nisqually Tribal Employment Rights

Office for the position of _____

on the above named project. This request is made because:

_____The TERO Office was unable to locate a TERO Referral qualified to fill the position.

_____The position is a skill which requires specialized training / certification for which the Employer has invested time and money into the training of the individual to be waived.

Name of individual seeking waiver for: _____

(Attach documentation of specialized skill)

Employer Signature: _____ Date: _____

Approved: _____ Disapproved: _____

TERO Officer signature: _____ Date: _____

(This waiver is in effect for sixty days from TERO Officer Signature date)

KEEP A COPY OF THIS WAIVER ON JOBSITE